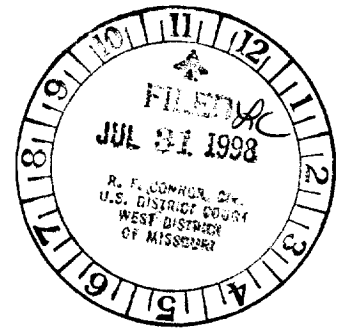


IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION



B. JEAN WEBB

Plaintiff,

vs.

CITY OF REPUBLIC, MISSOURI

Defendant.

No. 98-3306-CV-S-RGC

DEFENDANT'S RESPONSE TO PLAINTIFF'S  
MOTION TO AMEND COMPLAINT  
WITH SUGGESTIONS IN OPPOSITION

Defendant, City of Republic, by and through undersigned counsel, hereby files its response to Plaintiff's Motion to Amend Complaint, and would respectfully state to the Court that Plaintiff's Motion must be denied for the following reasons:

Suggestions in Opposition

1. Plaintiff has failed to satisfy the requirements of Rule 15 (a)

As quoted by Plaintiff, Rule 15 (a) of the Fed. R. Civ. P. states that leave to amend should be granted "when justice so *requires*". (Emphasis added). However, Plaintiff has failed to offer any reason why justice would "require" that she be permitted to amend. In fact, without stating her reasons, she has taken the unusual position that justice somehow "requires" that her prayer for actual damages be withdrawn.

While, as a general proposition, leave to amend is liberally granted, the language in Rule 15 (a) -- *i.e.*, "when justice so requires" -- should be viewed as something of a threshold for the moving party. The most reasonable interpretation of the rule is that leave to amend should be liberally granted in cases where it is established that justice *requires* it. Plaintiff cannot reasonably be viewed as having met that threshold in this case.

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Furthermore, there are several well-recognized grounds for denying leave to amend that courts must consider when faced with a motion to amend. Leave to amend must be denied when there is found to be "undue delay" by the moving party or "undue prejudice" to the non-moving party. Mann v. Duke Mfg., Inc., 166 F.R.D. 415, 416 (E.D. Mo. 1996), citing Williams v. Little Rock Municipal Water Works, 21 F.3d 218, 224 (8th Cir. 1994).

Courts have permitted parties to amend in cases where the result has been to eliminate difficult and emotional issues from a case and/or to spare needless discovery, Paglin v. Saztec Intern, Inc., 834 F. Supp. 1184, 1190 (W.D. Mo. 1993), or where Plaintiffs have inadvertently omitted an essential statutory reference from their complaint, but where "[t]he intent of the complaint [to include the statute] [was] obvious" and "the amendment would [have been] almost a formality." Tinsley v. Kemp, 750 F. Supp. 1001, 1010 (W.D. Mo. 1990). In this case, however, Plaintiff offers no such justification.

Were this amendment necessary to ensure fairness to Plaintiff, the Court might well be justified in granting her motion. But Plaintiff asserts nothing of the kind. Having failed to show how justice "requires" her proposed amendment, Plaintiff's motion must be denied.

## 2. An Amendment of the Complaint Will Work Undue Prejudice to Defendant

Plaintiff's assurances to the contrary notwithstanding, Defendant will in fact be unduly prejudiced should this Court grant Plaintiff's motion. Under Rule 15 (a), the danger of such prejudice is sufficient grounds to deny leave to amend. Mann v. Duke Mfg., Inc., 166 F.R.D. at 416. If the Court grants Plaintiff's motion, Defendant will be unduly prejudiced in two ways.

First, Defendant will lose a very real chance to utilize insurance coverage for the claims in this case. Insurance coverage for Defendant depends upon the inclusion of a prayer for actual damages in the Complaint. If Defendant has insurance coverage for the claims in this case it may be able to pay its expenses -- including Plaintiff's attorney fees,

should she prevail -- without putting public funds at risk. However, this potential benefit to Defendant and its citizens will be lost in the absence of a request by Plaintiff for actual damages. On the other hand, if Plaintiff wishes to forego actual damages, she can simply do so; she can accomplish this without amending her Complaint.

Secondly, Defendant will be unduly prejudiced by this amendment, in that Plaintiff will have deleted her prayer for actual damages, while having left in her Complaint the very allegations against the City that formed the basis for that prayer. To permit this is unfairly prejudicial to Defendant as it asserts its affirmative defense that the Plaintiff lacks standing to maintain the instant action. Similarly, if Plaintiff does not intend to prove and/or seek relief for actual damages that she alleges to have sustained as a result of the City's use of the "fish symbol", then such allegations are surplusage and immaterial to the issues in this case and should therefore be stricken.

Plaintiff should therefore, in fairness to Defendant, be made to either keep or delete *both* her allegations of injury and her prayer for actual damages. To keep the former and yet delete the latter unfairly impairs Defendant's ability to challenge Plaintiff on matters of standing and causation in this case. For instance, Plaintiff might seek to limit inquiry during discovery into the extent of her injuries -- an issue with obvious relevance, and of evidentiary value to Defendant -- on the grounds that she is not asking for actual damages. This unusual manner of pleading -- *i.e.*, accusing Defendant of "distinct and palpable injuries" but declining to ask compensation for them -- places Defendant in an unfairly prejudicial position.

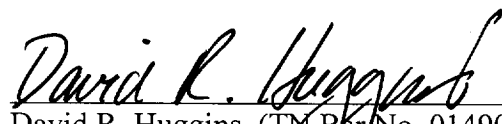
Neither Plaintiff's ability to obtain justice nor to decline actual damages depends upon filing an Amended Complaint in this case, but Defendant will suffer unfair prejudice if the amendment she has proposed is allowed to stand. Moreover, Plaintiff has clearly failed to satisfy the criteria set forth in Rule 15 (a), that an amendment be "required" in order to see that justice is done. Plaintiff loses *nothing* if her motion is

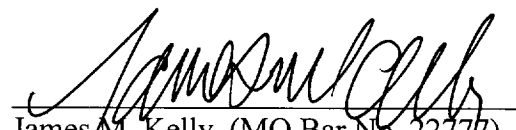
denied, while Defendant loses quite a bit if it is granted. Therefore, if justice "requires" anything in this case, it requires that Plaintiff's motion be denied.

WHEREFORE, Defendant respectfully requests that this honorable Court deny Plaintiff's Motion to Amend Complaint.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon Stephen Douglas Bonney, Esq., counsel for Plaintiff, 215 West 18th Street, Kansas City, MO 64108, via U.S. Mail, postage prepaid, on this the 30<sup>th</sup> day of July, 1998.

